



DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING AGENCY
HEADQUARTERS, NORTHERN REGION
11 BERNARD ROAD
FORT MONROE, VA 23651-1001

SFCA-NR

23 February 2005

Northern Region Contracting Policy Letter 1-3 (NR CPL 1-3)

SUBJECT: Approval of Non-Standard Clauses

Applicability. This policy letter applies to all contracting activities of the Army Contracting Agency Northern Region (ACA NR). It also applies to contracting activities that are under the operational control of the ACA NR Headquarters.

1. Purpose. To define the process and the documentation required for requesting approval of non-standard clauses.

2. References.

- a. AFARS 5101.304(4)(A).
- b. ACA AI 5101.301(c)(1).
- c. ACA AI 5101.301(c)(3).

3. Definitions.

a. Non-standard clause: Any clause or provision not otherwise contained in the FAR, DFARS, AFARS and ACA AI and which does not meet the definition of "deviation" at FAR 1.401. Solicitation instructions are not considered nonstandard clauses.

b. Significant public impact: Significant cost and/or administrative impact or burden on contractors or offerors.

4. Policy.

a. Ref. c. requires PARC approval for any non-standard clause to be used on a repetitive basis which will not have a significant cost or administrative impact on contractors or offerors or will not have a significant effect outside the internal operating procedures of the ACA. In such cases, the documentation shall be prepared in accordance with Paragraph 4.d. below and routed in accordance with Paragraph 5.

b. Ref. c. further states PARC approval is required for any non-standard clause that will be used one-time only unless delegated to the Chief of the Contracting Office or the Contracting Officer. This approval authority is hereby delegated to the Chief of the Contracting Office for those situations in which the clause will be used on a one-

time only basis; where it has been determined to be of no significant cost or administrative impact on contractors or offerors; and the clause has been coordinated with local legal counsel. The rationale and determination for the use of such clause shall be signed by the Chief of the Contracting Office and retained in the contract file. Additionally, the Chief of the Contracting Office shall maintain a master file of all non-standard clauses approved under this delegation.

c. When a repetitive non-standard clause will have a significant impact on the public, higher level approval is required in accordance with Ref. a. and Ref b. In such cases, the documentation shall be prepared in accordance with Paragraph 4.d. below and routed in accordance with Paragraph 5.

d. To assist you in preparing documentation for review, a sample package is enclosed. The package consists of a sample cover memorandum (Encl 1), a Clause Review Form (Encl 2), and a sample clause (Encl 3). The Clause Review Form has been developed as an actual form to maintain the integrity of the information contained within the document. This form will be posted on the ACA NR website and provided separately by e-mail. You can maneuver through the form by hitting the TAB key.

e. This NR CPL will be reviewed annually for changes and updates.

5. Responsibilities.

a. Contracting Officer.

(1) Drafts the nonstandard clause.

(2) Prepares the documentation justifying the need for the non-standard clause to include identifying whether the clause will be used on a one-time only or repetitive basis and what the impact, if any, there will be on the public.

(3) Coordinates the clause with local experts and legal counsel.

(4) Forwards all documentation to the Chief of the Contracting Office.

b. Chief of the Contracting Office.

(1) Reviews the non-standard clause and supporting documentation.

(2) Approves the use of the one-time only non-standard clause as delegated in accordance with Paragraph 4.b.

(3) For clauses outside delegated authority, forwards a memorandum requesting approval along with the non-standard clause, all supporting documentation and local legal review to the Installation Analyst, ACA NR HQ. This documentation should be submitted electronically and in hard-copy.

(4) Maintains a master file of all non-standard clauses approved under the delegation of authority from the PARC.

c. Installation Analyst, Contract Operations Division.

(1) Reviews the clause and documentation.

(2) Coordinates with Chief of Contract Operations Division who in turn forwards recommendation to Chief, Policy and Programs Branch for further NR HQ coordination.

d. Chief of the Policy and Programs Branch, BSD.

(1) Assigns Policy Analyst.

(2) Guides the work and reviews the product of the policy analyst.

e. Policy Analyst, P&P.

(1) Prepares Form 5 and coordinates with NR HQ staff (Legal, Small Business, etc.)

(2) Revises documentation as necessary.

(3) Submits Form 5 and memo for PARC review and signature.

(4) For non-standard repetitive clauses with no significant public impact approved by the PARC, Analyst forwards the documentation to the Chief of the Contracting Office, provides a copy of clause to HQ ACA and coordinates posting to AKO and NR website. If the clause is disapproved by the PARC, Analyst forwards recommendations as appropriate to the Chief of the Contracting Office.

(5) For non-standard repetitive clauses with significant public impact, Analyst forwards request for approval through the PARC to HQ ACA Contract Policy Directorate in accordance with Ref. a. and b.

(6) If approved by HQ ACA, Analyst forwards the approved document to the Chief of the Contracting Office and coordinates posting to AKO and NR website. It is important to note that the HQ ACA approval process consists of several steps. If HQ ACA is inclined to approve the clause, it will be published for public comment. After it has been determined that the public does not object to the clause, the clause will be approved by HQ ACA.

f. PARC. Approves or disapproves the non-standard clause, as delegated; or recommends approval of non-standard clause and sends approval request to HQ ACA in accordance with this CPL.

SFCA-NR (NR CPL 1-3)

SUBJECT: Approval of Non-Standard Clauses

6. Proponent. The primary proponent for this contracting policy letter is Ms. Mary Paige, Procurement Analyst at (757) 788-3508.

3 Encls
as



JOANN LANGSTON, SES
Principal Assistant
Responsible for Contracting



DEPARTMENT OF THE ARMY
U.S. ARMY CONTRACTING AGENCY
DIRECTORATE OF CONTRACTING
4118 SUSQUEHANNA AVENUE
ABERDEEN PROVING GROUND, MD 21005-3013

REPLY TO
ATTENTION OF:

SFCA-NR-APB

24 Mar 04

MEMORANDUM FOR Director, U.S. Army Contracting Agency, Northern Region
Headquarters, SFCA-NR-CO/Shirley Dowell, 11 Bernard Road, Bldg 10, Ft Monroe,
VA 23651-1001

SUBJECT: Request for Approval of Local Clauses

1. Request the enclosed local clauses be reviewed and approved by the PAO for local use.
 - a. ACA-Level Protest Program.
 - b. Restrictions Involving Non-Manufactured Wood Packaging (NMWP) and Pallets.
2. The point of contact for this action is Rita Maclary, (410) 278-0844, email: rita.m.maclary@us.army.mil.

Encls

/S/
BRIAN R. SAMSON
Director

SAMPLE

Encl 1

RECORD OF CLAUSE/PROVISION REVIEW

Contracting Office Reviewer:

Date:

Clause/Provision Title:

Clause Number:

Function of Clause/Provision:

Reference:

Background:

Clause/Provision Use: ☐ Repetitive
☐ One Time Use

Clause/Provision Affects: ☐ Offerors, before award.
☐ Contractors, after award.
☐ Offerors before and contractors after award.

Clause/Provision: ☐ Implements or clarifies higher-echelon requirement.
(Specify citation: _____).
☐ Implements installation-level procedure only (no known overlap
with higher-level clauses or regulations.

Clause/Provision: ☐ Significantly increases offeror/contractor costs and/or administrative
burden.
☐ Significantly decreases offeror/contractor costs and/or administrative
burden.
☐ Has no significant affect on offeror/contractor cost or administrative
burden.

Disposition: ☐ Clause/provision is for one time use only and has no affect on
offerors/contractors. Local approval granted on: _____.¹
☐ Clause/provision is for repetitive use and has no affect on
offerors/contractors. PARC approval required.
Forwarded to PARC on: _____.²
☐ Clause/provision is for one time or repetitive use and will have a significant affect
on offerors/contractors. HQ ACA approval required. Case prepared and
forwarded through channels for review and approval on: _____.³

Remarks:

¹ Chief of Contracting Office (COCO) approves.

² Routed through COCO for PARC approval.

³ Routed through COCO, then PARC to ACA HQ for approval.

RECORD OF CLAUSE/PROVISION REVIEW (Continued)

Coordination:

Legal: _____ ☐ CONCUR ☐ NONCONCUR DATE: _____
Attorney Advisor

Area Expert: _____ ☐ CONCUR ☐ NONCONCUR DATE: _____
(Safety, Security, etc.)

COCO: _____ ☐ CONCUR ☐ NONCONCUR DATE: _____

PARC: _____ ☐ CONCUR ☐ NONCONCUR DATE: _____

[Fill-in signature block info]

(Fill-in signature block above for whoever will be responsible for signing this document – if approval level is above the PARC, do not add approval line. This form will become an enclosure to a memo through channels to the approval authority.)

**SOLICITATION PREPARATION MANUAL
PART IV – SECTION L**

<u>SUBSECTION NO.</u>	<u>SUBJECT OR TITLE</u>	<u>WHEN USED</u>
L.33-4000	ACA-Level Protest Program (MAR 2004) AC 52.233-4000	All paper and electronic RFQ/RFPs for ACA. FAR, AFARS 33.103 and ACA AI Section 9. See also the ACA “Agency Protest Procedures” dated 1 Dec 03 at ACA-N website in the Library under Desk Guides.

ACA-LEVEL PROTEST PROGRAM (MAR 2004) - AC 52.233-4000

If you have complaints about this procurement, it is preferable that you first attempt to resolve those concerns with the responsible contracting officer. However, you can also protest to the Army Contracting Agency (ACA) Northern Region’s Principal Assistant Responsible for Contracting (PARC). The ACA-Level Protest Program is intended to encourage interested parties to seek resolution of their concerns within ACA as an Alternate Dispute Resolution forum, rather than filing a protest with the General Accounting Office (GAO) or other external forum. Contract award performance is suspended during the protest to the same extent, and within the same time periods, as if filed with the GAO, unless the PARC or the competition advocate decides, in writing, that override of the automatic suspension is justified for urgent and compelling reasons or in the best interest of the Government. The ACA protest decision is used to resolve protests within 35 calendar days from filing. To be timely, protests must be filed within the periods specified in FAR 33.103. Send protests (other than protests to the contracting officer) to:

Army Contracting Agency
Northern Region Headquarters
SFCA-NR
11 Bernard Road, Bldg 10
Fort Monroe, VA 23651-1001

Facsimile Number: 757-788-4779 or 757-788-4780
Voice Number: 757-788-4780
E-mail address: protest@army.mil